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IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

## PATENT APPLICATION

OFFICIAL

#9/ald  
Petition  
W/D ABN  
3-2-04

Applicants: **Arunachalam et al.** Case: **Arunachalam 7-18-4-4-1**  
Serial No.: **09/303,718** Examiner: **Unknown**  
Filed: **April 30, 1999** Group Art Unit: **2662**  
Title: **SCALABLE HIGH SPEED ROUTER APPARATUS**

**REQUEST FOR RECONSIDERATION OF DENIAL**  
**PETITION TO WITHDRAW HOLDING OF ABANDONMENT**  
**BASED ON FAILURE TO RECEIVE OFFICE ACTION**

VIA FACSIMILE 703-872-9306

Commissioner for Patents

P.O. Box 1450

Technology Center 2600

Alexandria, VA 22313-1450

Attention: Jing Ng, Director

SIR:

Applicants respectfully request reconsideration of the Office's February 26, 2004 denial of Applicants' Petition for Withdrawal of Abandonment (copy of the Office's decision is attached for convenience of the Office).

In support of Applicants' request for reconsideration, submitted herewith is the Declaration of Keith D. Nowak (the practitioner of record at the time of mailing the Office Action) including Mr. Nowak's statement that the Office Action mailed on June 5, 2002 was not received. In support of his statement, copies of the pertinent docket records where the non-received Office communication would have been entered had it been received and docketed have been attached to Mr. Nowak's declaration.


If the Office does not consider Mr. Nowak's declaration to constitute a sufficient showing of non-receipt of the non-final Office Action in accordance with the Office's requirements, Applicants submit that the failure of Mr. Nowak to inform "a client or former client of correspondence received from the Office" (per Rule 10.23(c)(8)) resulted in the unavoidable abandonment of the patent application for failure to respond by the client and that, therefore, the application should be revived.

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Page 2

Applicants' do not believe that any fee is due. In the event Applicants are incorrect, the Commissioner is authorized to charge Deposit Account No. 20-0782 for any fees due to make this Request for Reconsideration timely and complete.

Respectfully submitted,

Dated: 3/30/04

  
EAMON J. WALL, REG. #39,414  
MOSER, PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702  
Telephone: 732-530-9404  
Facsimile: 732-530-9808

Serial No. 09/303,718  
Page 3

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO, on the date indicated below.

*Laura E. Crater*  
LAURA E. CRATER

3/30/04  
Date of signature

Arunachalam  
7-18-4-4-1

## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Paper No. 8

MAIL

FEB 26 2004

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600MOSER, PATTERSON & SHERIDAN L.L.P.  
595 SHREWSBURY AVE, Suite 100  
SHREWSBURY NJ 07702  
Attention: Eamon J. WallIn re Application of  
Arunachalam et al.  
Application No. 09/303,718  
Filed: April 30, 1999  
For: SCALABLE HIGH SPEED ROUTER  
APPARATUSDECISION ON PETITION  
TO WITHDRAW HOLDING OF  
ABANDONMENT

This is in response to the Petition for Withdrawal of Abandonment filed December 11, 2003, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

On June 5, 2002, a non-final Office action was mailed (paper No. 4) in the subject application. A response from Applicants was not received and matched with the file. On November 10, 2003, a Notice of Abandonment was mailed (paper No. 5).

Petitioner alleges that the Office action of June 5, 2002 (paper No. 4) was not received. In support of this, Petitioner provides evidence of change of address (filed August 5, 2003), a declaration from a Ms. Clara J. Castle (identified in the petition as assistant to then attorney of record, Mr. Keith D. Nowak, Esq.) and copies of Lieberman & Nowak LLP' docket records.

In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

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MOSER, PATTERSON  
& SHERIDAN

Application No. 09/303,718  
Decision on Petition

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A review of the record indicates that the Notice To File Missing Parts of May 1, 2001, was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the non-final Office action (paper No. 4) on the part of the Patent and Trademark Office.

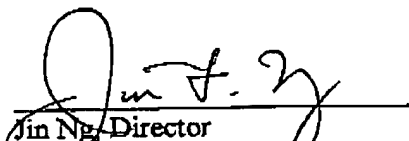
The petitioner has not made a sufficient showing of non-receipt of the non-final Office action (paper No. 4, mailed June 5, 2002) in accordance with the requirements set forth above. The instant petition lacks a statement *from the practitioner* of record (at the time of mailing the Office action), indicating: (1) that the non-final Office action (paper No. 4, mailed June 5, 2002) was not received, (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Notice To File Missing Parts was not received and (3) reference to attached docketing records within practitioner's statement.

The petition is **DENIED**.

With respect to the Associate Power of Attorney/Change of Correspondence Address filed by facsimile on August 5, 2003 (paper No. 6), it is noted that this communication merely appoints attorneys as associate attorneys of record. There is no petition to revoke or withdraw attorneys of record in the application. Mr. Nowak, for example, has not been withdrawn as attorney of record, or powers revoked, in the application.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include the deficiencies outlined above.

The application will be forwarded to TC2600's Technical Support Staff to update the correspondence address. Afterwards, the application will be held in the Technology Center for two months awaiting any requests for reconsideration of this decision.

  
Jin Ng, Director  
Technology Center 2600  
Communications  
(703) 305-4800

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Applicants: R. Arunachalam, V.P. Kumar, S.R. Rathnavelu, D. Stiliadis  
Serial No.: 09/303,718  
Filed: April 30, 1999  
For: SCALEABLE HIGH SPEED ROUTER APPARATUS  
Group Art Unit: 2731

**DECLARATION OF KEITH D. NOWAK**

U.S. Patent & Trademark Office  
Washington, D.C. 20231

Dear Sir:

I, Keith D. Nowak, declare that:

1. I was a partner in the law firm of Lieberman & Nowak LLP ("L&N") from February 1, 1981 to January 31, 2003.
2. The Office Action of June 5, 2002 did not appear on L&N's docket record for September 5, 2002 or December 5, 2002 (copy attached).
3. On February 1, 2003, we joined the law firm of Dickstein Shapiro Morin & Oshinsky and moved our offices from 350 Fifth Avenue, New York, NY to 1177 Avenue of the Americas, New York, NY, and the Notice of Abandonment mailed February 10, 2003 was not received.
4. To the best of my knowledge, no one at L&N received an Office Action or Notice of Abandonment for the above-captioned patent application.

5. If an Office Action had been received, it would have been docketed and given to me for a reply. As stated in the Declaration of Clara Jean Castle dated December 10, 2003, if she, or any other person employed by L&N had received the Office Action mailed June 5, 2002, the Office Action would have been entered into L&N's docket records for a response due on September 5, 2002, and a six month deadline of December 4, 2002.

6. Therefore, the fact that the Office Action mailed June 5, 2002 does not appear in L&N's docket record for September 5, 2002, or December 5, 2002, indicates that L&N did not receive that Office Action.

I am aware that willful false statements and the like are punishable by fine or imprisonment, or both under 18 U.S.C. 1001 and may jeopardize the validity of the instant application or any patent issuing thereon. I certify that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

Dated: March 22, 2004

Respectfully submitted,

By:

  
Keith D. Nowak

## PATENT DOCKET

Due / Last File Date / Date Number	Client	Country	Action	Compl. Date
<b>SEPTEMBER 2002</b>				
9/1 JKK 10661-2	DCT	Australia	Search reports	Not needed
9/1 JKK 10807-3	DCT	Australia	Search reports	Not needed
9/1 JKK 11044	Lucent	Japan	Office Action	9/9
9/4 JKK 11201	Brilliant	U.S.	File off Provisional by 10/4	
9/4 CJC 11200	Jacob	Foreign Filing due 10/4		10/4
9/4 JKK 11201	Brilliant	File off Provisional & For. Fil. Due		none per kdn
9/4 CJC 11200	Jacob	U.S.	BASE ISSUE FEE	done
9/7 CJC 11170	Hoberman	PCT	Demand Chapter II due	8/29
9/8 CJC 11205	McNerney	Foreign Filing Due 11/8		done
9/9 CJC 11206	Hoppy	File off Prov. & Ff Due 11/9		9/10
9/11 WRM 4021-099	Catalyst	U.S.	Appeal Brief	9/10
9/11 KDN 11155	Hoberman	U.S.	Office Action	9/23
9/12 JKK 10875	eNexus	China	Office Action	done
9/15 CJC 10874	Canada	eNexus	Examination	Proceeding to issue
9/17 JKK 11055	Lucent	BPA	Office Action	
9/18 CJC 11173	Grandoe	Foreign Filing Due 10/18		9/9/02
9/19 KDN 11165	Hoppy	U.S.	Rest. Req.	none
9/19 CJC 11198	Mashkakov	FOREIGN FILING DUE		done
9/19 BS 10652	Safas	Canada	Office Action	
9/19 WM 4021-099	Catalyst	U.S.	SIX MONTH DEADLINE	
9/20 CJC 11168-1	Catalyst	Foreign Filing Due 11/20		
9/20 JKK 11177	Jones	U.S.	Office Action (Final)	Abandoned
9/21 JKK 11199	Wilson	FILE OFF PROVISIONAL & FOR. FIL.		9/17
9/21 JKK 10875	eNexus	EPO	Instructions	done
9/23 CJC 10874	eNexus	EPO	Grant Fees	
9/26 JKK 11207	Hoberman	P.f. & File off Provisional Due 11/26		



Due /Last File Date /Date Number	Client	Country	Action	Compl. Date
<u>DECEMBER 2002</u>				
12/6 CJC 10822-1	Safas	Korea/PCT	Examination	1/4/02
12/7 JKK 11170	Hoberman	U.S.	Prov. & PF Due 2/7	
12/7 CJC 11176	Catalyst	U.S.	BIF DUE 1/7	
12/9 CJC 11174	Catalyst	U.S.	BIF & DWS. DUE	12/6
12/11 WRM	11142	Catalyst	U.S.	Office Action
12/11 WRM	11143	Catalyst	U.S.	Office Action
12/13 JKK 11217	Brilliant	File off prov. & ff due 2/13		
12/14 CJC 4021-115.	Catalyst	Foreign Filing Due 2/14		
12/15 JKK 11169	Brilliant	U.S.	Foreign filing & file off provisional due 2/15	
12/16 JKK 11132	Real Advisor	U.S.	Office Action	1/9
12/27 CJC 11169	Catalyst	U.S.	BIF DUE	Done
12/28 JKK 11214	Merritt	Foreign Filing Due 2/28		

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## FACSIMILE COVER SHEET

THIS MESSAGE HAS 10 PAGES INCLUDING THIS SHEET

TO: Commissioner for Patents  
FAX NO.: 703-872-9306  
FROM: Eamon J. Wall  
DATE: 3/30/04  
MATTER: Serial No. 09/303,718 Filed: 4/30/99  
DOCKET NO.: ARUNACHALAM 7-18-4-4-1  
APPLICANT: Arunachalam et al.

The following has been received in the U.S. Patent and Trademark Office on the date of this facsimile:

<input checked="" type="checkbox"/> Request for Reconsideration of Petition	<input type="checkbox"/> Transmittal Letter (2 copies)
<input type="checkbox"/> Disclosure Statement & PTO-1449	<input type="checkbox"/> Fee Transmittal (2 copies)
<input type="checkbox"/> Priority Document	<input checked="" type="checkbox"/> Deposit Account Transaction
<input type="checkbox"/> Drawings (____ sheets) informal	<input checked="" type="checkbox"/> Facsimile Transmission Certificate
<input checked="" type="checkbox"/> Declaration of Keith D. Nowak	dated <u>3/30/04</u>
<input checked="" type="checkbox"/> Copy of Decision on Petition	

### CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

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LAURA E. CRATER  
Name of person signing this certificate

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Signature and date

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